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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/010,468

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Marvin Lewis JR.

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EXAMINER

STEELE, JENNIFER A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

02/20/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/010,468	<b>Applicant(s)</b> LEWIS, MARVIN	
	<b>Examiner</b> JENNIFER STEELE	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 January 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/21/2008 has been entered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claim 1 and 9 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims include the limitation that fabric is substantially non-channeled. The Figures 1-9 as shown and described in the specification do not show that the fabric is substantially non-channeled.

Any negative limitation or exclusionary proviso must have basis in the original disclosure. The mere absence of a positive recitation is not basis for an exclusion. Any claim containing a negative limitation which does not have basis in the original disclosure should be rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. See *Ex parte Grasselli*, 231 USPQ 393 (Bd. App. 1983), *aff'd mem.*, 783 F.2d453 (Fed. Cir. 1984).

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2. Claim 1 and 9 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims include the limitation that the “base fabric layer and the patterned fabric layer are integrated by lengthwise and widthwise spanning connections”. The specification, as amended, states that the “base fabric layer and the patterned fabric layer are integrated by connections spanning the length and width of the tape.” It is not clear to one of ordinary skill in the art what the connections are and what part of the structure as outlined in the specification and Figures 1-9. Figures 1-9 do not show spanning connections and the specification does not describe where the spanning connections are located in the figures.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claim 1-7 and 9-15 rejected under 35 U.S.C. 103(a) as being unpatentable over Siegel et al (US 5,472,766) and Gajjar (US 4,638,648) and Frenzel (US 4,893,482) and Spencer, Knitting Technology. Siegel teaches a mattress tape for securing the edge of the mattress (ABST). Siegel teaches a warp knit mattress tape that allows for the construction of a tape that has desired rigidity and density of the fabric. Siegel teaches through warp knitting it is possible to incorporate a large variety of different threads at different sections of the mattress tape (col. 2, lines 6-13). Siegel teaches lengthwise and widthwise yarns that span the entire width of the tape. Siegel teaches a tape with three different sections, a center section of greater rigidity and two side sections that are more flexible (col. 2, lines 14-24). Siegel also teaches different embodiments with different inlay yarns that span different sections of the tape. Siegel teaches through warp knitting enables the manufacturer to form designs on the mattress tape and make a mattress tape more aesthetically pleasing with patterns (col. 8, lines 48-54). Siegel teaches four inlaid yarns that are equated with filling yarns and sets of warp yarns called chain loops  $W_1 - W_{16}$ . The structure of Siegel provides for a technical front and a technical back that have a different pattern. Siegel differs from the current application and does not specifically teach a base layer and a patterned layer.

Gajjar teaches a multi-layered warp knit fabric using a four bar stitch (four guide bars) and four filling yarns that are patterned to create two layers by placing each of the

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four yarns in patterns on one side or the other of the fabric. Gajjar teaches multiple filling threads where the filling threads are patterned to allow cotton blend threads (22) to the outer layer and polyester and nylon yarns (20,24) to the inner layer. Gajjar teaches a layered fabric where the technical back is not the same as the technical front. Gajjar's invention is produced on a knitting machine and the layers are produced at the same time.

Frenzel teaches a warp knit fabric strip of single or multiple layers with multiple filling threads where the filling weft threads zig-zag or traverse and extend from one edge of the fabric to the other (col. 5 lines 44-55). Frenzel teaches that the weft threads are arranged in an oblique fashion to form a pattern.

Spencer, Knitting Technology teaches that crochet knitting machines of the raschel type are capable of producing layered fabrics that are produced at the same time on the machine using more than 2 filling yarns (pgs 301). The machines are capable of producing a wide variety of patterns (pg. 310) that would include diamond pattern.

Siegel teaches a narrow width crochet warp knit fabric for use as a mattress tape but does not teach a layered fabric or a diamond pattern. Gajjar's teaches a double layer fabric with multiple filling yarns produced at the same time on a warp knitting machine. Frenzel's teaches a layered, patterned warp knit fabric strip of multiple filling yarns and teaches traversing, zig-zagging, the weft yarns across the strip. Further, Spencer teaches that crochet type machines are capable of utilizing multiple filling yarns to produce two layer fabrics at the same time that have patterns. It would have been

obvious to one of ordinary skill in the art at the time the invention was made to produce a mattress closing tape motivated to produce a narrow width fabric strip on a crochet warp knitting machine that can produce double layers, use multiple filling yarns and a decorative pattern. It would have been obvious to one of ordinary skill in the art to produce a multilayer narrow-width fabric with multiple fillings, patterns and layers on a crochet warp knitting machine motivated to produce a mattress tape that is strong, decorative and can be produced on a machine.

#### ***Terminal Disclaimer***

4. The terminal disclaimer filed on 1/6/2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of PN 6,698,251 has been reviewed and is accepted. The terminal disclaimer has been recorded.

#### ***Response to Arguments***

5. Applicant's arguments with respect to claim 1-7, 9-15 have been considered but are moot in view of the new ground(s) of rejection. Applicant's amended claims state that the current invention is non-channeled. Examiner has presented new 35 USC 103(a) rejection with respect to Seigel in view of Gajjar and Frenzel and Spencer. As Seigel teaches a warp knitted mattress tape and does not require a cord as part of the structure, Seigel is considered a finding in the art that it would have been obvious to produce a warp knitted mattress tape.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNIFER STEELE whose telephone number is (571)272-7115. The examiner can normally be reached on Office Hours Mon-Fri 8AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. S./  
Examiner, Art Unit 1794

/Elizabeth M. Cole/  
Primary Examiner, Art Unit 1794

2/7/2008